

REMARKS

This is a full and timely response to the non-final Office Action dated September 15, 2010. Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

In the Office Action, the Office (1) rejected Claim 13 under 35 U.S.C. 102(b) as being anticipated by Beoni (5,814,104); (2) objected to Claims 14 and 15 as being dependent upon a rejected base claim, but indicated they contained allowable subject matter and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims; and (3) indicated that Claims 1-12 and 16-30 [sic] were allowed.

In this paper, various claims have been amended. More particularly, the limitations of dependent Claim 14 have been amended into Claim 13, and Claim 14 has been canceled. Thirty-two claims remain pending in the application, Claims 1-13 and 15-33. For at least the reasons set forth below, Applicant respectfully submits that all remaining claims pending in the application are allowable.

Apparent clerical error in the number of claims pending in the application

The Office Action Summary, Form PTOL-326, provided as a first page of the Office Action, indicates that 30 claims are pending in the application. However, this is believed to be in error because the application was filed with 33 claims, including the payment of fees for 33 claims. Further, insofar as can be determined from the file history of this application in PAIR, no claims have heretofore been canceled. Thus, Applicant presumes that what the Examiner intended to state in the Office Action was that 33 claims are pending in the application.

Applicants' response assumes that 33 claims are pending in this application, as set forth in the listing of claims at the beginning of this Amendment.

Rejection of Claim 13

Claim 13 was rejected under 35 U.S.C. 102(b) as being anticipated by Beoni (5,814,104). Without commenting on the correctness of this rejection, and for the sole purpose of expediting the prosecution of this application, Applicant has amended Claim 13 herewith to include the limitations of original Claim 14. This amendment is the equivalent of rewriting Claim 14 in independent form. Further, as original Claim 14 was indicated as containing allowable subject matter, this amendment of Claim 13 should now make Claim 13 allowable. With this amendment to Claim 13, original Claim 14 has been canceled.

Other non-substantive amendments

Claim 1 has been amended to add an inadvertently omitted article "said" prior to "shaft distal end" in the fourth paragraph.

Claim 15 has been amended to change its dependency from "Claim 14" to "Claim 13".

Allowed Claims

The Examiner indicated that the remaining Claims 1-12 and 16-30 [sic] were allowed. (Note, as pointed out above, it is believed that "Claims 16-30" should have been "Claims 16-33".) Appreciation is expressed for this indication of allowance. Applicant concurs with the Examiner's stated reasons for allowable subject matter, namely, the "prior art does not teach or

fairly suggest a method for implanting a hearing aid including providing a hearing aid housing with a stud projecting therefrom and transporting the housing through a lumen in a tunneling shaft and positioning the stud in a hole opening into the ear canal, claim 1; a combination of insertion instruments and a hearing aid housing as set forth in claim 16; or a device for implantation including a non-circular cross section and transducer as claimed in claim 14 (now amended claim 13).”

CONCLUSION

For the foregoing reasons, the present application is thought to be clearly in condition for allowance. Accordingly, favorable reconsideration of the application in light of these remarks is courteously solicited. If any fees are owed in connection with this paper that have not been elsewhere authorized, authorization is hereby given to charge those fees to Deposit Account 50-0648 in the name of Advanced Bionics, LLC. If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Dated: December 1, 2010

Respectfully submitted,

Electronic signature: /Bryant R. Gold/

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